

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)

Takahisa Ueda)

Appln. No. : 08/581,050 ✓)

Filed : December 27, 1995)

For : PACKING)

) Art Unit: 3108 3611

) Ex: D. DePumpo

PETITION UNDER 37 CFR. 1.181

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

On December 15, 2000, the office of the undersigned received an Office Action issued by the Examiner (Paper No. 31), dated December 14, 2000, indicating that the Office Action was final. On December 19, 2000, the undersigned filed a Preliminary Amendment to amend claims 2 and 4, to add new claims 5 and 6 and to submit Enclosures A-C which were shown to the examiner at the interview held on November 8, 2000. The interview was conducted with the examiner, the inventor, Mr. Ueda, Mr. Ueda's supervisor at the assignee company, Mr. Marumoto, and the undersigned's partner, Mr. Cooper. The undersigned was not able to participate in the interview because he was engaged in defending a deposition in Buffalo, NY.

The undersigned was not aware that the Office Action of December 14, 2000 had been received by his office when the Preliminary Amendment was filed. The issuance of such an Office Action was not expected since the examiner was told at the interview of November 8, 2000 by the undersigned's partner that a continuation application was to be filed and that an

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amendment to the claims was also to be filed. In fact, the continuation application was filed on November 28, 2000. The Preliminary Amendment was delayed until December 19, 2000 to obtain approval of applicant's Japanese counsel of the claim amendments. The time between November 28, 2000 and December 19, 2000 would not appear to be an unreasonable delay in filing the Preliminary Amendment, especially in view of the fact that the examiner was advised at the interview that claim amendments would be forthcoming. The examiner certainly understood applicant's wishes since the Examiner's Interview Summary Record states as much in noting the "claims and specification will be amended."

On January 11, 2001, the undersigned received an Advisory Action (Paper No. 33) from the examiner indicating that the Preliminary Amendment would not be entered.

It is respectfully submitted that in view of applicant's assertion at the interview the Office Action of December 14, 2000, which is a duplicate of the Office Action of August 29, 2000, Paper No. 28, which also presented a final rejection, should not have issued and certainly not made final. The examiner could have telephoned the undersigned if time was a factor since he knew that the point of the interview was precisely to refile the application and submit amended claims.

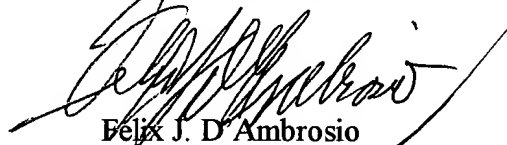
Now, in view of the issuance of Paper No. 33, applicant is required to refile the application once again in order to have the contents of the Preliminary Amendment considered. These actions by the examiner create an unnecessary and unreasonable burden on applicant, which also further delays the prosecution of his application.

The undersigned on behalf of applicant urges the Commissioner to review this matter and to instruct the examiner that in fairness to applicant the Preliminary Amendment filed on December 19, 2000 should be entered and considered on its merits without first requiring

applicant to again refile the application.

Please charge any fee required by this Petition to Deposit Account No. 10-1213.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'Felix J. D'Ambrosio', written over a horizontal line.

Felix J. D'Ambrosio

Reg. No. 25,721

January 26, 2001

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